



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 16 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Tim Nicholson
S&S Tire and Auto Service Center
1475 Jingle Bell Lane
Lexington, Kentucky 40509

Re: S&S Tire and Auto Service Center
Consent Agreement and Final Order
Docket Number EPCRA-04-2012-2068(b)

Dear Mr. Nicholson:

Enclosed please find an executed copy of the Consent Agreement and Final Order that resolves the Emergency Planning and Community Right-to-Know Act of 1986 matter (Docket No. EPCRA-04-2012-2068(b)) involving S&S Tire and Auto Service Center. The CAFO was filed with the Regional Hearing Clerk, as required by 40 C.F.R. Part 22 and became effective on the date of the filing.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Security and Exchange Commission any environmental enforcement actions taken by the Environmental Protection Agency. If you have any questions with regards to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the SEC Notice.

If you have any questions, please call Ms. Deanne Grant at (404) 562-9291.

Sincerely,

A handwritten signature in black ink, appearing to read "Caron B. Falconer".

Caron B. Falconer
Chief
EPCRA Enforcement Section

Enclosures

6. Respondent owns and operates a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

7. Respondent's facility is located at 1475 Jingle Bell Lane, Lexington, Kentucky 40509.

III. EPA's Allegations of Violations

8. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations found at 40 C.F.R. Part 370, provide that the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) for hazardous chemicals under the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act, shall submit to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and the fire department with jurisdiction over the facility, by March 1, 1988, and on or before March 1 annually thereafter, a completed emergency and hazardous chemical inventory form (Tier I or Tier II) as described in 40 C.F.R. Part 370, containing the information required by that part for hazardous chemicals present at the facility at any one time in the calendar year in amounts equal to or greater than 10,000 pounds and containing the information required by that part for extremely hazardous substances (EHS) present at the facility at any one time in amounts equal to or greater than the threshold planning quantity (TPQ) or 500 pounds, whichever is less.

9. At some time during the calendar years of 2010, 2009, and 2008, sulfuric acid was present at the facility in an amount equal to or greater than 500 pounds.

10. Sulfuric acid is an "extremely hazardous substance" as that term is defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with an RQ of 500 pounds, as specified in 40 C.F.R. Part 355, Appendices A & B.

11. Respondent failed to submit a completed Emergency and Hazardous Chemical Inventory Form for sulfuric acid to the SERC, the LEPC, and fire department with jurisdiction over the facility for calendar years 2010, 2009, and 2008 by March 1 of the year following the calendar year for which a report was required.

12. Respondent violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, at its facility for calendar years 2010, 2009, and 2008 and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

13. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$37,500 for each violation of Section 312 that occurred after January 12, 2009. Each day a violation of Section 312 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by Administrative Order.

IV. Consent Agreement

14. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

15. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

16. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

17. Respondent agrees to complete the Supplemental Environmental Project (SEP) set forth in this CAFO.

18. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA at the facility.

19. Compliance with this CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for a violation of any federal or state statute, regulation or permit; to initiate an action for imminent and substantial endangerment; or to pursue criminal enforcement.

20. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of EPCRA.

V. Final Order

21. Respondent shall pay a civil penalty of THREE THOUSAND THREE HUNDRED SIXTY FOUR DOLLARS (\$3,364), for the violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

22. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," to one of the following addresses:

BY MAIL

U.S. Environmental
Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

BY OVERNIGHT

U.S. Bank
Government Lockbox 979077 US
EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 418-1028

The check shall reference on its face the name and the Docket Number of the CAFO.

23. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Deanne Grant
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

24. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

VI. Supplemental Environmental Project

25. Respondent shall undertake and complete, in accordance with the approved SEP in this matter, the following Emergency Planning and Preparedness project within 45 days of the effective date of this CAFO. Respondent shall expend TWELVE THOUSAND NINE HUNDRED EIGHT ONE DOLLARS (\$12,981) to purchase the following equipment for the Lexington-Fayette Urban County Government Division of Emergency Management:

- 1 Wilson Cellular Telephone Repeater System
- 2 B&H Audio/Video Video/Data Projectors
- 2 B&H Audio/Video Projector Mounting Hardware
- 2 B&H Audio/Video Large Screen LED TV- Sharp LC 60LE
- 2 B&H Audio/Video 96" Projection Screens
- 1 B&H Audio/Video Room Sound System – LG NB2420A
- 1 B&H Audio/Video Behringer EPA900 Portable PA System
- 3 B&H Audio/Video Medium Wall Mounted Video Displays
- 1 B&H Audio/Video Sony HXR-NX70U Compact Camcorder

26. Respondent agrees that the cost of performing the SEP in Paragraph 25 exceeds the minimum required SEP expenditure of \$12,614.

27. Respondent agrees to the following language concerning the Emergency Planning and Preparedness SEP:

Respondent certifies that it, nor the recipient of the Emergency Planning and Preparedness SEP, is a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose financial performance period has not yet expired.

28. Respondent has obtained and presented to EPA a separate written certification from the recipient of the Emergency Planning and Preparedness SEP that certifies that the Recipient, Lexington-Fayette Urban County Government Division of Emergency Management is not a party to any open federal financial assistance transaction as stated in paragraph 27.

29. For purposes of Paragraph 25, whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.

30. Respondent agrees that EPA may conduct an inspection at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

31. No later than thirty (30) calendar days after the completion of the project, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the EPCRA Enforcement Section, to the attention of Deanne Grant at the address provided above. The Report shall include the following:

- (a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and
- (b) copies of appropriate documentation, including invoices and receipts, showing a total expenditure of TWELVE THOUSAND NINE HUNDRED EIGHTY ONE DOLLARS (\$12,981), or greater, was spent to purchase equipment as described in paragraph 25.

Upon request, Respondent shall send EPA any additional documentation requested by EPA relating to the SEP.

32. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

33. Respondent certifies that as of the date this CAFO is signed, it is not required to any agreement or grant. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

34. Any public statement, oral or written, by Respondent making any reference to the SEP shall include the following language:

"This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 312 of the Emergency Planning and Community Right-to-Know Act of 1986."

35. If Respondent fails to timely and fully complete any part of the SEP, including failure to spend the minimum amount of TWELVE THOUSAND SIX HUNDRED FOURTEEN DOLLARS (\$12,614), Respondent shall pay to the United States a stipulated penalty of the difference between 12,614 (SEP dollar amount) and the actual SEP expenditure.

36. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late.

37. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth above for the payment of the civil penalty.

38. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

39. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

40. This CAFO shall be binding upon the Respondent, its successors and assigns.

41. The following individual is authorized to receive service for EPA in this proceeding:

Caron B. Falconer
U.S. EPA, Region 4
Air, Pesticides & Toxic Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-8451


42. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

VII. Effective Date

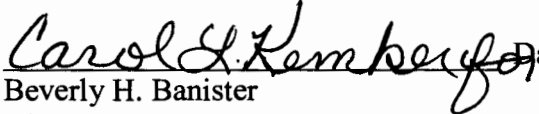
43. The effective date of this CAFO shall be the date upon which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

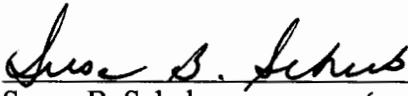
S&S Tire and Auto Service Center.

By:  Date: 8-7-12
Name: Tim Nicholson (Typed or Printed)
Title: Safety Director (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 7/25/12
Beverly H. Banister
Director
Air, Pesticides & Toxics
Management Division

APPROVED AND SO ORDERED this 15 day of August, 2012.


Susan B. Schub
Regional Judicial Officer


I hereby certify that I have this day served a true and correct copy of the foregoing
Consent Agreement and Final Order, in the Matter of S&S Tire and Auto Service Center; Docket
Number: EPCRA-04-2012-2068(b), on the parties listed below in the manner indicated:

Caron B. Falconer (Via EPA's internal mail)
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street
Atlanta, Georgia 30303

Robert Caplan (Via EPA's internal mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, Georgia 30303

Tim Nicholson (Via Certified Mail - Return Receipt
S&S Tire and Auto Service Center Requested)
1475 Jingle Bell Lane
Lexington, Kentucky 40509

Date: 8-16-12


Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511